

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

IGNACIO AGUILAR,
Plaintiff,
v.
CITY OF CONCORD,
Defendant.

Case No. 16-cv-01670-LB

**ORDER GRANTING LEAVE TO FILE
AMENDED COMPLAINT**

Re: ECF No. 49

The plaintiff moved to amend his complaint to name the Doe defendants and to include theories of their liability. (Motion – ECF No. 49.¹) The defendant opposes the motion and observes that the deadline for amending pleadings has passed. (Opposition – ECF No. 51.) The court finds that it can decide the motion without oral argument. *See* Civ. L. R. 7-1(b).

Under Rule 15, after a responsive pleading is filed, “a party may amend its pleading only with the opposing party’s consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). “The court should freely give leave when justice so requires.” *Id.* This leave policy is applied with “extreme liberality.” *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). A

¹ Record citations refer to the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

1 court considers five factors to determine whether to grant leave to amend: (1) bad faith; (2) undue
2 delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) whether the plaintiff
3 previously amended his complaint. *See Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2004).
4 Delay alone is insufficient to justify denial of leave to amend. *Jones v. Bates*, 127 F.3d 839, 847
5 n.8 (9th Cir. 1997). Of the factors, prejudice to the opposing party is the “touchstone of the inquiry
6 under rule 15(a)” and “carries the greatest weight.” *See Eminence Capital*, 316 F.3d at 1052.
7 Absent prejudice or a strong showing on other factors, a presumption exists under Rule 15(a)
8 favoring granting leave to amend. *See id.* The party opposing a motion to amend bears the burden
9 of showing prejudice. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).

10 Motions to amend the pleadings filed after the date set in the court’s scheduling order must
11 satisfy the more stringent “good cause” showing required under Rule 16. *See Johnson v.*
12 *Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir.1992). “Unlike Rule 15(a)’s liberal
13 amendment policy which focuses on the bad faith of the party seeking to interpose an amendment
14 and the prejudice to the opposing party, Rule 16(b)’s ‘good cause’ standard primarily considers
15 the diligence of the party seeking the amendment.” *Id.* at 609.

16 Under the circumstances, the court grants leave. The court appreciates the defendant’s
17 argument but finds that naming the Doe defendants does not meaningfully alter the litigation
18 landscape. The court does not find bad faith and — while the timing is not ideal — does not find
19 sufficient lack of diligence to deny amendment. The parties have a case-management conference
20 set for June 22, 2017. They must address the effect of this order on the discovery issues that the
21 defendant identifies and develop a plan that meets the defendant’s discovery needs.

22 This disposes of ECF No. 49.

23 **IT IS SO ORDERED.**

24 Dated: June 1, 2017

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26 LAUREL BEELER
27 United States Magistrate Judge
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